IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 315 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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STATE OF GUJARAT

Versus

RAMSINGBHAI VASAVA

Appearance:

1. Criminal Revision Application No. 315 of 2002

MR DESAI, APP, for Petitioner No. 1

for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/09/2002

ORAL JUDGEMENT

1s. Heard learned Additional Public Prosecutor Mr. Desai for the revisioner. The respondent, though served, has chosen not to contest this revision application.

2. The State is aggrieved by an order passed by the learned Special Judge, Bharuch, below Ex.19 in Special Corruption Case No.6 of 1999, on the 10th July, 2002, rejecting the said application.

3. The said application was tendered during the course of examination of witness-Pratapbhai Khatariyabhai, who happen to be the Panch witness in the corruption case. The Panch witness, initially, stated that the Panchnama was drawn in two parts, namely, the preliminary Panchnama was drawn in the office of the A.C.B. and the later Panchnama was drawn at Zanor Gate. During the cross-examination, the witness stated that the entire Panchnama was drawn at the A.C.B. office. The prosecution, therefore, sought indulgence of the Court

for putting a question in re-examination about the Panchnama and to declare the witness as hostile, if need be, and cross-examine him thereafter. The said prayer was rejected by the Trial Court. Hence, this revision application.

4. Learned Additional Public Prosecutor Mr. Desai has placed reliance on the decision in the case of State of Gujarat v. Pirubhai Jivabhai Mistry, 1997(2) GCD 503 (Gujarat). The said decision was also cited before the Trial Court and was considered by the Court below. However, in the opinion of the Trial Court, that was not applicable to the facts of the case. In that case, it was observed that where a Panch witness supports the prosecution case in examination-in-chief and then gives evidence destructing the prosecution case in cross-examination, the prosecution may be permitted to re-examine or to put him leading questions in the nature of cross-examination and no illegality can be said to have been committed. In this case, the Trial Court had not allowed cross-examination of such witness because the Public Prosecutor failed to make such request at the very time when the witness deviated from the prosecution case and it was held that such rejection was not justified.

5. It is true that, in the instant case, the witness has not given a total go by to his original version, but at the same time, an ambiguity has crept in during the cross-examination and cause of justice required that the prosecution is permitted to put appropriate questions in re-examination to clarify the ambiguity, i.e. as to by saying that the Panchnama was drawn at the A.C.B. office, whether the witness meant whole of the Panchnama or only later part of it. In the opinion of this Court, therefore, ends of justice would have been served better if the permission sought for was granted by the Court below. No damage is going to be caused to the defence by permitting such a course as the witness would again be available to the defence for cross-examination. By not allowing this application, the ambiguity is permitted to stay on record to the detriment of the prosecution. In the opinion of this Court, therefore, the revision application deserves to be allowed and the same is allowed. The order impugned herein is hereby set aside. The prosecution is permitted to put requisite questions in re-examination to the witness to clarify the ambiguity. The question whether the witness may be declared hostile or not would arise only at a later point of time depending on the answer of the witness and no view is expressed thereon. In such eventuality, the Trial Court will take appropriate decision on such

question, if it arises before it. Rule is made absolute.

6. Direct service is permitted.

[A.L. DAVE, J.]

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